IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 2890 of 2015 (O&M)
Date of decision: 2nd May, 2023

The Punjab State Civil Supplies Corporation Ltd. (PUNSUP), Chandigarh and anr.

Appellants

Versus

M/s Zimidara Rice Mills and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. R. S. Kalra, Advocate for the appellant.
Mr. Naresh Prabhakar, Advocate for respondents No. 1 and 2.

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AVNEESH JHINGAN, J:

1. Punjab State Civil Supplies Corporation Ltd. (for brevity, 'PUNSUP') is in appeal aggrieved of acceptance of objections filed by M/s Zimidara Rice Mills (hereinafter referred to as 'the miller').

2. The facts shorn off unnecessary details are that on 8.10.2001, PUNSUP entered into an agreement with the miller for shelling of paddy for the crop year 2001-02. Miller failed to supply entire milled rice recovered from shelling of 4814 metric Tonns of paddy. There was also delay in delivery of rice. The arbitration initiated at the instance of PUNSUP culminated in award dated 8.5.2006. PUNSUP was held entitled to recovery of Rs. 6650042/- along with interest at the agreed rate w.e.f. 29.9.2002 till the date of award and further interest @ 18% from the date of award till realization of the amount. The objections filed by the miller were

allowed on 9.7.2014. The award was set aside. It was held that the claim was covered under clause 8 of the agreement and the Managing Director, PUNSUP was granted liberty to proceed afresh in accordance with law.

3. The relevant clauses of the agreement are reproduced below:

> *7. "The miller shall ensure that:-*
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> *i) The resultant rice after milling of paddy is aerated for 72 hours before bagging.*
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> *ii) The degree of polish given to rice shall be 5%.*
>
> *iii) In case there is a shortfall in the recovery of rice provided in sub-clause (i) above the miller shall pay to the PUNSUP the price of rice at custom milled rice rates plus interest at the rate of 21% from the date it becomes payable till the date of actual realisation equivalent to the shortfall.*
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> *iv) The by-products viz. Broken rice, rice kani, phuk (rice husk) and rice bran etc. obtained druing manufacture of rice shall be the property of the miller and the PUNSUP shall have no right or responsibility in regard to these.*
>
> *v) The miller will be paid milling and other admissible charges at the convenience of the PUNSUP after the milling operations are completed and the entire rice is delivered to Central Pool.*
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> *8. The entire quantity of rice of all varieties delivered by the miller to the FCI in PUNSUP account shall conform to the specifications laid down in the Punjab Rice Procurement (Levy) Order, 1983, as amended from time to time or in any other order or notification issued by the State Government from time to time. The stocks of rice not conforming to the specifications so laid down shall be liable to be rejected in respect of such quantity of rice which is not found to be within the specifications and the miller shall be liable to pay to the PUNSUP for the quantity of rice short supplied, as penalty at the custom milling rate fixed by Govt. of India plus 21%*

interest from the date it becomes payable till the date of actual realization of the converted variety of rice. The decision of the MANAGING DIRECTOR, PUNSUP (hereinafter referred to as the MANAGING DIRECTOR of the PUNSUP) in this behalf shall be final.

ii) At the time of delivery, the stocks of rice shall be subject to the inspection as per provisions of the Punjab Rice Procurement (Levy) Order, 1983. Any quality allowance determined at the time of inspection according to the specifications shall be recovered from the Miller's bills.

iii) The miller shall be required to manufacture rice as per specifications laid down by the Govt. of India and deliver the same to the Food Corporation of India at its depots by 30.6.2002.

In the event of his failure to supply rice within the stipulated period, he shall be liable for an interest @ 21% for the first year of default and @ 30% for the subsequent period on the custom milled price fixed by Govt. of India from the date it becomes payable till the date of actual realisation towards the left over quantity stocks of paddy. The decision of the MANAGING DIRECTOR, PUNSUP in this behalf shall be final.

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21. All disputes and difference arising out of or in any manner touching or concerning this agreement whatsoever (except as to any matter the decision of which is expressly provided for in the contract) shall be referred to the sole arbitration of the MANAGING DIRECTOR, PUNSUP or any person appointed by him in this behalf. There will be No objection to any such appointment that the person appointed is or was an employee of Food and Supplies Department Punjab/ PUNSUP or that he had to deal with the matter to which the contract relates and that in the course of his duties such an employee of the Food *and supplies Department Punjab/ PUNSUP had expressed views on all or any of the matter in dispute or difference. The award of such arbitration shall be final and binding on the parties to this contract. It is a term of this contract that in the event of the arbitrator being transferred or vacating his office or being enable to act for any reason, the MANAGING DIRECTOR, PUNSUP at the time of such transfer, vacation of officer, death or inability shall appoint another person to act as arbitrator. Such a person shall be entitled to proceed with reference from and the stage where it was left by his predecessor.*

Provided further that any demand for arbitration in respect of any claim(s) of the Miller under the contract shall be in writing and made within one year of the date of completion or expiry of the period or contract, if the demand is not made within the period, the claim(s) of the Miller shall be deemed to have been waived off and released of all liabilities under the contract in respect of these claims."

4. Learned counsel for PUNSUP submits that the claims made by PUNSUP were not covered under clause 8(i) and (iii) of the agreement (hereinafter referred to as 'excepted clause'). He further submits that the claims made have been summarised in the grounds of appeal.

The relevant portion of grounds of appeal is reproduced below:

"i. The respondent failed to deliver 5774.87 quintals of rice altogether and accordingly an amount of Rs.61,57,802/- @ 1066.31 per quintal became recoverable from the respondent for short deliver of rice.

ii. That as per Clause 16 of the agreement the surplus gunny bags left with miller after supplying the Custom Milled

Rice were to be retained by the Milller and cost of the same is recoverable from the miller in accordance with the rates fixed by the Government of India from time to time. In light of the above, the respondent was liable to pay the cost of 44821 gunny bags at 16.58 per bag retained by it amounting to Rs.7,43,132/-.

iii. That Sales Tax amounting to Rs.32,698/-, Income Tax Rs.7,945/-, Quality Cuts of Rs.19,054/- and Interest etc. were recoverable.

iv. That in light of Clause 8, in addition to the above mentioned amounts, due to failure to supply rice within the stipulated period the Respondent Mill was also liable to pay interest @ 21% for the first year of default and @ 30% for the subsequent period on the Custom Milled Price fixed by Government of India from the date it became payable till the date of actual realization towards the left over quantity stocks of paddy."

5. Learned counsel for the miller defends the impugned order and submits that clause 8(i) deals with the 'quantity of rice short supplied' and the matter has to be adjudicated by the Managing Director, PUNSUP.

6. Heard learned counsel for the parties and perused the record produced by them.

7. Clause 7 of the agreement elucidates five conditions: (i) the rice after milling of paddy is to be aerated for 72 hours before bagging; (ii) 5% polish shall be given to the rice; (iii) the miller shall be liable to pay to

PUNSUP the price of rice to be determined at custom milled price rate for the shortfall for recovery of rice. Further the miller shall be liable to pay interest @ 21%; (iv) the by-products result of shelling of paddy would be the property of the miller; and (v) that the milling and other admissible charges shall be paid to the miller at the convenience of PUNSUP after entire rice is delivered to Central Pool.

8. Clause 8(i) and (iii) deals with the instances in which the decision of the Managing Director, PUNSUP shall be final. Under Clause 8(i), in case of rejection of rice for not conforming to the specifications laid down, the miller shall pay to PUNSUP the penalty at custom milling rate for the quantity of short supplied rice along with interest @ 21%. As per Clause 8(iii), in eventuality of failure of the miller to supply the required manufactured rice as per the specifications within the stipulated period, there shall be liability to pay interest @ 21% for the first year of default and 30% for the subsequent period.

9. Clause 21 of the agreement provides for dispute resolution through arbitration except as to matter the decision of which is specifically provided for in the contract.

10. There was no claim of penalty under clause 8(i) for rejection of rice for not confirming with specifications. Except for the claim of interest for the delayed delivery of rice, the other claims made by appellant do not fall within the ambit of 'excepted clause'. The Additional District Judge erred in setting aside the entire award on the ground that all the claims are not arbitrable and are to be decided by the Managing Director, PUNSUP.

11. In view of the above, the impugned order is set aside, the

matter is remitted back for deciding the objections under Section 34 of the Act afresh.

12. The appeal is allowed.

13. Since the main appeal has been allowed, pending application(s), if any, is rendered infructuous.

[AVNEESH JHINGAN]
JUDGE

2nd May, 2023
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1. Whether speaking/ reasoned	:	Yes
2. Whether reportable	:	Yes